

## **Plaintiffs' Exhibit Y**

**MARGARET McCARTHY**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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SIERRA BOUCHER, LILY ENGBRECHT,  
NATASSIA TUHOVAK, HANNAH WHELAN, and  
CASSIDY WOOD,

Plaintiffs,

- against -                   Case No.  
                                    1:22-cv-00381-CCR

TRUSTEES OF CANISIUS COLLEGE,

Defendant.

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Examination before trial of **MARGARET  
McCARTHY**, taken pursuant to the Federal Rules of  
Civil Procedure, in the offices of JACK W. HUNT &  
ASSOCIATES, INC., 1120 Liberty Building, Buffalo,  
New York, on September 27, 2024, commencing at  
10:25 a.m., before LORI K. BECK, CSR, CM, Notary  
Public.

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10:40:52 1           **Q.**    Okay. And then as the chair of the  
10:40:56 2 ABEC program, Dr. Noonan was responsible for  
10:41:00 3 submitting to you a budget for that program?

10:41:04 4           **A.**    The budgets went through the deans, and  
10:41:07 5 the deans recommended the budgets.

10:41:08 6           And there was a -- the college budget-wide  
10:41:12 7 committee that finalized budgets for the college,  
10:41:19 8 then approved by the board of trustees.

10:41:22 9           It was quite a long process.

10:41:23 10          **Q.**    It sounds like it.

10:41:25 11          Did complaints from ABEC department faculty  
10:41:30 12 ever reach you when you -- when you were in the  
10:41:32 13 position of vice-president of academic affairs  
10:41:35 14 regarding the allocation of funds within the ABEC  
10:41:38 15 program?

10:41:43 16          **A.**    I recall a concern by -- I think it was  
10:41:47 17 Dr. Malini Suchak about the -- there's also  
10:41:53 18 within -- within ABEC, there's an institute for the  
10:41:56 19 study of human-animal relations, generally known as  
10:42:01 20 ISHAR. We just refer to it as ISHAR by its  
10:42:04 21 initials, I-S-H-A-R.

10:42:07 22          I believe I -- I recall Dr. Suchak reaching  
10:42:11 23 out to the dean, who was Dr. Beth Gill, G-I-L-L, at

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10:42:19 1 the time, and Dr. Gill bringing to me the concern  
10:42:22 2 that Dr. Suchak had about ISHAR funds, that they  
10:42:27 3 weren't being fairly distributed or -- or that  
10:42:32 4 they're -- I'm sorry, I'm going to take that back  
10:42:34 5 for a second.

10:42:35 6 I think the concern was more that they were  
10:42:37 7 being misappropriated. She had a concern that they  
10:42:41 8 were being misspent.

10:42:43 9 Q. Dr. Suchak was concerned that  
10:42:44 10 Dr. Noonan was misappropriating funds from the  
10:42:48 11 ISHAR fund, correct?

10:42:50 12 A. That's it. That was the complaint.

10:42:52 13 Q. And did you ever direct Dr. Gill to  
10:42:58 14 remedy that complaint?

10:43:00 15 A. I did more than that. I asked the  
10:43:01 16 controller to review the account, controller of the  
10:43:06 17 institution. I watched it myself, but I also asked  
10:43:08 18 the controller to please review it.

10:43:10 19 I know he asked for receipts, and I don't  
10:43:14 20 recall ever receiving any information back from him  
10:43:17 21 that there was a problem.

10:43:24 22 Q. To your knowledge, did any other ABEC  
10:43:26 23 program faculty members complain about the

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12:52:15 1 Q. So were you -- were you informed by  
12:52:29 2 Dr. Gill that the concern about favoritism had to  
12:52:32 3 do with Dr. Noonan repeatedly taking certain  
12:52:37 4 trips -- certain students on trips?

12:52:40 5 **MR. D'ANTONIO:** Objection to the form.

12:52:42 6 **THE WITNESS:** No.

12:52:43 7 **BY MS. NANAU:**

12:52:43 8 Q. Okay. I don't think I have any more  
12:53:01 9 questions for you about this Exhibit, so we can  
12:53:03 10 move on.

12:53:28 11 Did there come a time when a decision was  
12:53:32 12 made regarding Dr. Noonan's future at Canisius?

12:53:40 13 A. Yes.

12:53:41 14 Q. And who made that decision?

12:53:42 15 A. The president, ultimately, and I.

12:53:53 16 Q. What was the decision that you and  
12:53:56 17 President Hurley reached with regard to Dr. Noonan  
12:53:59 18 in the wake of Ms. Walleshauser's investigation?

12:54:04 19 A. That we needed to separate from the --  
12:54:07 20 we needed to separate him from the institution.

12:54:14 21 Q. And who conveyed that decision to  
12:54:15 22 Dr. Noonan, do you know?

12:54:19 23 A. His attorney, I believe.

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12:54:20 1 Q. Okay. So after you and President  
12:54:26 2 Hurley made the decision to terminate Dr. Noonan's  
12:54:31 3 employment with Canisius, were the discussions  
12:54:34 4 largely between attorneys?

12:54:38 5 A. Yes.

12:54:40 6 Q. Okay. There came a time when Canisius  
12:54:44 7 executed a settlement agreement with Dr. Noonan,  
12:54:47 8 correct?

12:54:48 9 A. Yes.

10 The following was marked for Identification:

11 PLF. EXH. 78 Separation Agreement,  
12 Confidentiality Agreement  
13 and Release, Bates numbers  
14 Canisius04956 through  
15 Canisius04966

12:55:26 16

12:55:26 17 BY MS. NANAU:

12:55:26 18 Q. So, Dr. McCarthy, I show you what's  
12:55:28 19 been marked as Plaintiffs' 78. It's a document  
12:55:33 20 with the Bates-stamp range Canisius 4956 to 4966.

12:55:39 21 Do you recognize this document?

12:55:40 22 A. Yes.

12:55:41 23 Q. You've seen it before?

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12:55:42 1           **A.** Yes.

12:55:42 2           **Q.** This is the settlement agreement that  
12:55:44 3 Canisius entered into with Dr. Noonan in May of  
12:55:49 4 2019, correct?

12:55:50 5           **A.** Yes.

12:55:53 6           **Q.** Did Dr. Noonan require, to sign this  
12:55:57 7 agreement, that his termination of employment would  
12:56:00 8 be called a retirement?

12:56:02 9           **MR. D'ANTONIO:** Do you want her to read the  
12:56:04 10 document before you ask her questions here?

12:56:06 11           **MS. NANAU:** Well, I'm wondering --

12:56:09 12           **BY MS. NANAU:**

12:56:09 13           **Q.** Do you -- are you aware of the contents  
12:56:11 14 of this document?

12:56:12 15           **A.** It would help just to review it  
12:56:14 16 quickly, if you don't mind.

12:56:14 17           **Q.** Please, yes.

12:56:14 18           **A.** I don't think I need to read it word  
12:56:16 19 for word.

12:56:18 20           **MR. D'ANTONIO:** Then you can ask more  
12:56:20 21 questions.

12:56:21 22           **MS. NANAU:** I assumed more knowledge.

12:56:26 23           **THE WITNESS:** Just to refresh.

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12:56:27 1 (Off the record: 12:56 p.m.)

12:59:37 2 (On the record: 12:59 p.m.)

12:59:38 3 **BY MS. NANAU:**

12:59:38 4 Q. So, Dr. McCarthy, you've had an  
12:59:40 5 opportunity to review Plaintiffs' 78, correct?

12:59:43 6 A. Yes.

12:59:44 7 Q. So my question is this:

12:59:45 8 Did Dr. Noonan require that his termination  
12:59:48 9 of employment would be articulated to the Canisius  
12:59:55 10 community as a retirement?

12:59:59 11 A. The specific terms were negotiated by  
13:00:02 12 the attorneys, attorney-to-attorney. I was not in  
13:00:04 13 those conversations, so I really can't say.

13:00:07 14 It's here in the document.

13:00:08 15 Q. Okay. So I guess Canisius -- or let me  
13:00:13 16 take it -- let me strike that.

13:00:15 17 You are not aware of any specific demands  
13:00:20 18 that Dr. Noonan raised to enter into the separation  
13:00:24 19 agreement with Canisius?

13:00:27 20 A. If I -- any -- any specific demands I  
13:00:30 21 would have heard would have come to me from our  
13:00:33 22 attorney and been privileged.

13:00:36 23 Q. Well --

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13:00:37 1           **A.**     Unless I'm misunderstanding your  
13:00:38 2 question.

13:00:39 3           **Q.**     So -- so privilege is -- covers  
13:00:42 4 communications with the attorney but not the facts,  
13:00:47 5 right?

13:00:47 6           **A.**     I thought -- I'm sorry, would you  
13:00:48 7 repeat the question? I thought you said was I --

13:00:48 8           **Q.**     Sure.

13:00:51 9           **A.**     -- aware of any specific --

13:00:54 10          **Q.**     Sure. Were you aware of any specific  
13:00:57 11 demands, right, that Dr. Noonan raised to enter  
13:00:59 12 into this agreement with Canisius?

13:01:01 13          That's what I'm wondering, if you have any  
13:01:04 14 understanding of those demands.

13:01:10 15          **MR. D'ANTONIO:** So let me just -- before --  
13:01:12 16 before she answers, let me just interpose a caution  
13:01:16 17 here.

13:01:17 18          **MS. NANAU:** Okay.

13:01:18 19          **MR. D'ANTONIO:** To the extent that -- that  
13:01:22 20 there were specific demands that were made during  
13:01:27 21 the negotiations, we would have discussed them in  
13:01:33 22 terms of what the college could or should have done  
13:01:37 23 in response to those and what the objectives of the

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13:01:41 1 institution were, and those would be privileged  
13:01:44 2 communications, so --

13:01:46 3 **MS. NANAU:** The discussion among you and  
13:01:48 4 Canisius, correct?

13:01:48 5 **MR. D'ANTONIO:** Yes, absolutely.

13:01:50 6 **MS. NANAU:** Right.

13:01:50 7 **MR. D'ANTONIO:** Exactly right.

13:01:51 8 **MS. NANAU:** Okay. I understand that  
13:01:53 9 carve-out.

13:01:54 10 **MR. D'ANTONIO:** So -- so if the question is  
13:01:56 11 did I talk with Dr. McCarthy and give her a list of  
13:02:01 12 demands, you know, I'll let her answer that  
13:02:03 13 question.

13:02:03 14 **MS. NANAU:** Okay.

13:02:04 15 **MR. D'ANTONIO:** But -- but beyond that, kind  
13:02:06 16 of what was the strategy and all of that --

13:02:08 17 **MS. NANAU:** That, I understand, is  
13:02:09 18 privileged.

13:02:09 19 **MR. D'ANTONIO:** Okay. Fair enough.

13:02:10 20 **MS. NANAU:** This is -- I'm trying to --

13:02:12 21 **MR. D'ANTONIO:** I understand.

13:02:13 22 **MS. NANAU:** I'm trying to really, you know,  
13:02:15 23 not tread on attorney-client communications here,

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13:02:19 1 but I do believe that I am entitled to understand  
13:02:21 2 the framework for this negotiation, right?

13:02:24 3 **MR. D'ANTONIO:** If it was -- if it was  
13:02:26 4 shared, you know, as these are the demands.

13:02:30 5 **MS. NANAU:** Yes.

13:02:31 6 **THE WITNESS:** But if that list comes from  
13:02:32 7 you, then it's not privileged?

13:02:34 8 **MR. D'ANTONIO:** Well, if the list -- the  
13:02:36 9 list itself -- in other words, if I ticked off for  
13:02:40 10 you here are ten things Dr. Noonan wanted -- and  
13:02:44 11 I'm not suggesting that I did do that, but if I  
13:02:47 12 did, Daniela's entitled to it. I'll let you answer  
13:02:52 13 that question.

13:02:53 14 But if it's here's the demands and what we  
13:02:56 15 should do strategy-wise --

13:02:58 16 **THE WITNESS:** Okay.

13:02:59 17 **MR. D'ANTONIO:** -- or any discussions that  
13:03:02 18 you and the president and I would have had --

13:03:02 19 **THE WITNESS:** Then it doesn't --

13:03:03 20 **MR. D'ANTONIO:** -- that's privileged.

13:03:04 21 **THE WITNESS:** Okay.

13:03:04 22 **BY MS. NANAU:**

13:03:06 23 **Q.** Do you understand the distinction?

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